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PATENT  
Docket No.: 2263/101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jerry L. Toms )  
Serial No. : 09/920,230 )  
Cnfrm No. : 5306 )  
Filed : August 1, 2001 )  
For : DEVICE AND SYSTEM FOR USE IN )  
IMAGING PARTICULATE MATTER )

Examiner:  
J. Valenza

Art Unit:  
3651

RECEIVED

SEP 14 2005

OFFICE OF PETITIONS

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION  
PURSUANT TO 37 C.F.R. § 1.137(b)

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Pursuant to 37 CFR § 1.137(b), applicant hereby petitions to revive an application unintentionally permitted to go abandoned. As discussed below, the entire delay between the date of abandonment and the filing of this petition was unintentional. Applicant respectfully requests that the Commissioner of Patents, in his discretion, grant this petition to reinstate the above-identified application.

The above-noted application went abandoned effective December 10, 2003, for failure to respond to the office action mailed September 10, 2003, on or before the statutory deadline of March 10, 2004. The failure to file a response was unintentional by both the applicant and applicant's counsel.

At all relevant times, counsel's normal procedure for handling incoming mail included the opening of mail by one or more secretaries, transfer of official correspondence from the USPTO to a paralegal for docketing and forwarding to the client, and then forwarding the file to the attorney responsible for the particular case. (The procedure has since been changed. All incoming official correspondence is routed directly to a single paralegal, who docket the correspondence and forwards the file to a second paralegal, who

then forwards the correspondence to the client. After sending the correspondence to the client, the file is transferred to the appropriate attorney handling the case.)

Prior to the abandonment of the above-identified application, all attorneys and paralegals were provided with monthly docketing reports to identify both future and past deadlines. The above-identified application appears to have been appropriately docketed. (Between the date of abandonment and the present date, a complete upgrade of the docketing software was performed in March-April 2004 and the docket reminder system has been substantially changed. A number of different monthly reports are provided: a report of all deadlines for the coming three months, a report of statutory deadlines for the coming month, a report of deadlines that have a statutory deadline in the following month (i.e., four to nine weeks away), and a report of past due dates. In addition, daily reports are now provided that contain both deadlines for acting as well as reminders for upcoming deadlines that may be weeks or months in the future, and e-mail reminders are provided both one and two days in advance of any statutory deadlines.)

Despite the above reports and procedures, the undersigned attorney missed the deadline and failed to recognize that the application had, in fact, gone abandoned.

The USPTO mailed a Notice of Abandonment on April 19, 2004. That Notice was not received by the applicant's counsel. At that time neither applicant's counsel nor applicant realized that the application had gone abandoned.

On April 21, 2005, as part of a routine docket clean up procedure, a paralegal to applicant's counsel accessed the USPTO PAIR system to ascertain the status of this application. The USPTO PAIR system showed the application to be abandoned and indicated a Notice of Abandonment had been sent. The discrepancy between counsel's docket for this application and the USPTO PAIR system is reflected in Exhibit 1, the docketing record for the application. There is a notation on this print-out indicating that the Notice of Abandonment had not been received (and, consequently, was never forwarded to the applicant).

I received an e-mail communication from the applicant on August 15, 2005, inquiring about the status of the application. Upon locating the file, I confirmed the abandoned status of the application and on August 16-17, 2005, consulted with other counsel regarding reviving the application. I attempted to contact the client on August 18, 2005, and left a message for the applicant to call me. The applicant returned my call on September 2, 2005, while I was out of the office. Upon returning to the office on September 6, 2005, I contacted the applicant to inform him of the status of the application. (I also prepared a

response to the September 10, 2003, office action and prepared this Petition for Revival of an Unintentionally Abandoned Application.)

As evidenced by the accompanying Declaration of Jerry L. Toms, inventor of the above-identified application, the entire delay for responding to the outstanding office action was unintentional, as the applicant was unaware until September 6, 2005, that the above-noted application had gone abandoned. The entire period of delay was also unintentional by the undersigned attorney. Applicant respectfully submits that this satisfies the requirements under 37 CFR § 1.137(b)(3).


Accompanying this petition is a response to the outstanding office action and notice of appeal, which together satisfy the requirement of 37 CFR § 1.137(b)(1). In compliance with 37 CFR § 1.137(b)(2), the Commissioner for Patents is authorized to charge the \$750.00 petition fee and the \$250 notice of appeal fee (pursuant to 37 CFR §§ 1.17(m) and 41.20(b)(1), respectively) to Deposit Account No. 14-1138. Please charge any additional necessary fees or credit any overpayment to Deposit Account No. 14-1138.

No terminal disclaimer is required under 37 CFR §§ 1.137(b)(4), 1.137(d).

In view of all of the foregoing, applicant respectfully requests grant of this petition and revival of the above-identified application. To the extent that additional information is required or further questions need to be addressed, the undersigned respectfully requests that the Office of Petitions contact the undersigned attorney directly at the number listed below.

Respectfully submitted,

Dated: September 8, 2005

By:   
Edwin V. Merkel  
Registration No. 40,087

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EXHIBIT 1

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PTO  
ABANDONED



**NIXON  
PEABODY  
LLP**  
ATTORNEYS AT LAW

Patent: 2263/101 United States  
**DIGITAL VIDEO WORLD, INC.**

**CONFIDENTIAL**

**DEVICE AND SYSTEM FOR USE IN IMAGING  
PARTICULATE MATTER**

Printed:

**Rochester Patent**

Country: United States	Foreign Agent:	Application: 8/1/2001 09/920,230
Status: FILED	Client: DIGITAL VIDEO WORLD, INC.	Publication: 7/4/2002 US20020084172
Sub Status:	Division:	Patent:
Case Type: REGULAR CASE TYPE	Current Owner: DIGITAL VIDEO WORLD, INC.	Parent:
Relation Type: ORIGINAL OR PATENT CASE	Client Ref #:	1st Filed: 8/1/2000
Filing Type: NATIONAL CASE	Recordal Date:	Tax Base:
Filing #:	Reel/Frame: /	Next Tax:
Attorney #1: EDWIN V. MERKEL	Confirmation Number:	Expires:
Attorney #2:	Convention Type:	
Attorney #3:	Created 7/12/2001 by TK Updated 4/21/2005 by bjl	

**Inventors**

Inventor Name	Assignment Date	Inventor
		Jerry L. Toms

**Other Nos**

Other Number Code	Other Number1	Other Number Date
PTO Confirmation No.	5306	

**Actions**

Action	Action Due Date	Taken Date	Deadline Date	Reminder Receipt	Completed Date	Action Notes
OFFICE ACTION FROM PTO					11/19/2002	
UNSIGNED PAT. APPLN. MAILED TO PTO					8/1/2001	
CORRECTED FILING RECEIPT RECEIVED					4/12/2002	
FILING RECEIPT REMINDER					9/19/2001	
FINAL OFFICE ACTION FROM PTO~					9/10/2003	
NOTICE FROM PTO					7/26/2002	*Notice of Publication of Application.
OFFICE ACTION FROM PTO					2/25/2003	
FORMAL DRAWINGS DUE					8/1/2001	
RESTRICTION REQUIREMENT FROM PTO					10/9/2002	
ABANDONED					4/19/2004	*PAIR: Mail Abandonment for Failure to Response to Office Action.
POSTCARD REMINDER	9/1/2001				8/13/2001	
NOTICE TO FILE MISSING PARTS	10/1/2001				9/10/2001	
INFORMATION DISCLOSURE STATEMENT	11/1/2001				12/7/2001	

SUBSTITUTE DRAWINGS TO PTO	11/10/2001	4/10/2002	12/10/2001	
RESPONSE TO NOTICE OF MISSING PARTS	11/10/2001	4/10/2002	12/10/2001	
1 MONTH EXT. OF TIME	12/10/2001	4/10/2002	12/10/2001	
PUBLISHED	2/1/2002		7/4/2002	
SUPPLEMENTAL DISCLOSURE	5/6/2002		3/4/2002	**May need to cite references in PCT Search Report.
RESPONSE DUE	11/9/2002	4/9/2003	10/29/2002	
RESPONSE DUE	12/9/2002	4/9/2003	2/3/2003	*Response to office action (10/9/02) not fully responsive. Includes one month extension of time.
3 MONTH EXT. OF TIME	2/9/2003	4/9/2003	2/3/2003	
AMENDMENT DUE	5/25/2003	8/25/2003	8/25/2003	
3 MONTH EXT. OF TIME	8/25/2003	8/25/2003	8/25/2003	
POSTCARD REMINDER	9/25/2003		9/25/2003	--- Closed by script 11/14/2004
AMENDMENT AFTER FINAL REJECTION	11/10/2003	3/10/2004	8/25/2003	
NOTICE OF APPEAL DUE	12/10/2003	3/10/2004		*Not filed.
NOTICE OF ABANDONMENT FROM PTO	4/19/2004			*Never received. See mailed in PAIR on 4/21/05.

**Description**

Final Amendment filed (faxed) 8/23/03. Abandoned (per PAIR 4/19/04).

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